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UNITED STATES DISTRICT COURT
DISTRICT OF MONTANA
MISSOULA DIVISION

TANYA GERSH,

Plaintiff,

vs.

ANDREW ANGLIN, publisher of
the *Daily Stormer*,

Defendant.

Case No.: 9:17-cv-00050-DLC-JCL

**PLAINTIFF'S MOTION TO
VACATE MARCH 16, 2018
DEADLINE FOR AMENDING
PLEADINGS**

Plaintiff Tanya Gersh respectfully moves the Court to vacate the Deadline for Amending Pleadings, currently set for March 16, 2018. Ms. Gersh further suggests that, if the Court denies the now-pending Motion To Dismiss, the Court

should conduct a status conference to discuss when to reset this deadline, and also whether to adjust additional case deadlines as well.¹

* * * *

This Court entered an Order on December 15, 2017, setting various deadlines, including a March 16, 2018, Deadline for Amending Pleadings. *See* ECF 41. In that same Order, the Court stayed discovery pending a decision on the Motion To Dismiss filed by Defendant Andrew Anglin.

At the Preliminary Pretrial Conference conducted the day before the entry of the Order, the Court considered and discussed the deadline for amending pleadings. Specifically, the Court explained its expectation that a March 16, 2018, deadline would give the parties sufficient time to do the discovery necessary to determine whether to amend their pleadings, to add additional parties (as Ms. Gersh expects she may do), or add claims or defenses. *See* ECF 39.

Discovery remains stayed, however. For this reason, the parties remain essentially in the same position as they were in December. With the exception of subpoenas Mr. Anglin served to obtain evidence related to his jurisdictional defense, the parties have taken no discovery.

¹ Plaintiff has attempted to confer with Defendant pursuant to L.R. 7.1 by email on March 8, 2018, but has not received a response as of the time of this filing.

Even through due diligence, therefore, Plaintiff could not reasonably make an informed decision whether to file any motion to amend by the current deadline.

These circumstances amount to good cause for modifying the Order. *Cf.*

Fed. R. Civ. P. 16(b)(4) (permitting modification of the scheduling order upon showing of good cause and with judge's consent); *see also Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992) ("Rule 16(b)'s 'good cause' standard primarily considers the diligence of the party seeking the amendment. The district court may modify the pretrial schedule 'if it cannot reasonably be met despite the diligence of the party seeking the extension.'").

Plaintiff also respectfully suggests that, if and when the Court denies Mr. Anglin's Motion To Dismiss, the Court should convene a status conference to set a new Deadline for Amending Pleadings, and also to determine whether to adjust any other case deadlines set forth in the Order issued December 15, 2017.

DATED March 9, 2018.

/s/ David C. Dinielli

Attorney for Plaintiff Tanya Gersh
on behalf of all Attorneys for Plaintiff

/s/ John Morrison

Attorney for Plaintiff Tanya Gersh
on behalf of all Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on this date the foregoing document was filed through the Court's CM/ECF filing system, and by virtue of this filing notice will be sent electronically to all counsel of record, including:

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on this March 9, 2018.

/s/ David C. Dinielli

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